IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.10167/07
Mahesh Chand Mittal Vs. JDA

Date of order : 12/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri R.K. Daga for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the order of the Jaipur Development Authority Appellate Tribunal dated 23.7.2007.

Learned counsel for the petitioner has argued that the petitioner cannot be saddled with penalty and interest because the allotment-cum-demand letter dated 8.2.2006 was never served upon him. He personally met the officers of the respondent on 17.9.2006 and on collecting allotment-cum-demand notice from them, he deposited the requisite amount on 6.11.2006. Learned counsel has invited the attention of the Court towards the photograph of the envelop Annexure-A/3 which contains the letter on which the postman made a note

regarding incomplete address but on that basis the Tribunal was not justified to draw the presumption under Section 86(5) of the Jaipur Development Authority Act. Learned counsel relied on the judgment of Allahabad High Court in Smt. Ganpati Devi Vs. IInd Addl. District Judge, Bahraich & Anr.-1998 (2) Civil Court Cases 48 (All.) and on the judgment of this Court in M/s. Sitaram Ramavtar Vs. M/s. Lohiya Murlidhar Meghraj-AIR 1975 Rajasthan 121 in support of his contentions.

The Allahabad High Court in Smt. Ganpati Devi, supra, has held that unless and until the postal address is correct, the presumption under Section 114 of the Indian Evidence Act of its due service cannot be raised. In M/s.Sitaram Ramavtar, supra, this Court has held that refusal of registered notice cannot be treated as valid service, more particularly the letter which is not properly addressed. When a letter is not properly addressed, no question of

presumption arises. Perusal of Annexure-A/1 which is the application submitted by the petitioner reveals that the address as was given by the petitioner was mentioned in the envelop. The learned counsel submits that the name of the Village was not correctly described as it was mentioned as Nandbai on the envelop which is in fact Nadbai. From the order of the Tribunal, it appears that in fact two letters were sent to the petitioner on the address given by him by registered post. One registered post letter bearing no.205 dated 28.2.2006 and another registered post letter bearing no.3621 dated 20.4.06. The letters also indicate name of district and village. Both the letters were returned back with the stamp “for want of complete address” and they could not be delivered to the addressee. No efforts were made by the petitioner to procure the certificate from the postal department that such letters were received back in the post office, even though the letters were registered.

In my considered view, therefore, even if the argument and presumption is accepted, the fact remains that the letters were sent on the address given and it was therefore fault of the petitioner that he did not give complete address.

I therefore do not find any merit in this writ petition. The writ petition is dismissed.

(MOHAMMAD RAFIQ), J.

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